

1 they consider to be at full capacity, and it's only
2 those documents that you're willing to -- even if you
3 are willing to do it, that you're going to wrestle
4 with that one.

5 MR. COOK: And we would do that. It's
6 just that we've never had that segregation.

7 ADMIN. JUDGE SIPPEL: Well, then that's -
8 - so, okay. Well then let's put all that to one side
9 for now. You're going to come up on the 9th of the
10 December with your map designation of full
11 capacities. And then what's the situation on the
12 Osmose report?

13 MR. LANGLEY: What do you mean?

14 ADMIN. JUDGE SIPPEL: Well, I mean in
15 terms of when is that going to be final final?

16 MR. LANGLEY: Well, we submitted our
17 final report --

18 ADMIN. JUDGE SIPPEL: Right.

19 MR. LANGLEY: It begins with --

20 ADMIN. JUDGE SIPPEL: Except it's not
21 final, right?

22 MR. LANGLEY: That's right. Well, what we

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1 want to do is to audit some additional -- I say audit
2 -- for Osmose to go out and measure and photograph
3 some additional poles. For reasons that are beyond
4 our control at this point, that cannot be done until,
5 we believe, either the very end of this year or the
6 beginning of next year. And what we would do --

7 ADMIN. JUDGE SIPPEL: And what are those
8 reasons?

9 MR. LANGLEY: Well, Osmose can't do it,
10 because they're all in Mississippi.

11 ADMIN. JUDGE SIPPEL: Well, can't they
12 get a ticket and go to Mississippi or what?

13 MR. LANGLEY: Well, it's Katrina related.
14 I mean and that --

15 ADMIN. JUDGE SIPPEL: Oh, I see.

16 MR. LANGLEY: They organize their
17 priorities. I'm not --

18 ADMIN. JUDGE SIPPEL: All right. Okay.

19 MR. LANGLEY: -- in a position to tell
20 them that --

21 ADMIN. JUDGE SIPPEL: Well. Okay. All
22 right. No. We don't want to get into that. All

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1 right. So you need how much more time?

2 MR. LANGLEY: Well, I've been told that
3 they would be able to do it by mid-January.

4 ADMIN. JUDGE SIPPEL: What is the it that
5 they would be able to do?

6 MR. LANGLEY: To sample the additional
7 poles that we want them to -- to evaluate the
8 additional poles we want them to evaluate.

9 ADMIN. JUDGE SIPPEL: Well, are they in a
10 position at this point to -- or are you in a position
11 at this point to take what poles that they have
12 inspected or whatnot and indicate which of those you
13 would allege to be at full capacity?

14 MR. LANGLEY: Yes. And we've identified
15 that in terms of number, and I believe on December
16 9th, they will have a pole -by-pole as in what street
17 it's actually on.

18 ADMIN. JUDGE SIPPEL: You're right. So
19 you already mentioned that. It would whatever they
20 have is going to be an overlay on what the earlier
21 ones would show, and so you'll have -- at least
22 you'll be up -to-date. You won't have the final

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1 final, but you'll be up-to-date?

2 MR. LANGLEY: That's correct.

3 ADMIN. JUDGE SIPPEL: So that seems to be
4 the answer to that problem --

5 MR. SEIVER: Well --

6 ADMIN. JUDGE SIPPEL: -- that concern.

7 MR. SEIVER: I'm sorry, your honor.

8 ADMIN. JUDGE SIPPEL: Well, what I'm
9 saying is that you will have, by December 9th, you
10 will have a preliminary universe of the poles that
11 they are relying upon as being at full capacity.

12 MR. SEIVER: Well, your honor, if I
13 could, and speaking contemporaneously and maybe it
14 would be the better thing for us to do some filings
15 after this so we could flush it out on paper, but
16 maybe we should just cut off any more effort from
17 Osmose, get what we've gotten on the -- or what they
18 have on the 9,000 or however number of poles that
19 they've got, with the backup, with the maps, and
20 everything, so we can all look at those, and why
21 don't we just agree to -- we'll just pick from that
22 group for right now. Now the problem is it's in

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1 Pensacola, which means it doesn't cover our Mediacom
2 pole or our Comcast pole. I think it's just Cox. Am
3 I right?

4 MR. LANGLEY: That's correct.

5 MR. SEIVER: In Pensacola. So we've got
6 that as a side issue. But if perhaps Gulf Power
7 would agree that for purposes of this 10 or 20 or
8 however we're going to decide sort of preliminary
9 matter, let's get those poles done. Then we can
10 limit discovery to whatever the make-ready is. And I
11 think because it's in Pensacola, we're not going to
12 have to go to 10 or 12 offices. I think it'll be in
13 Pensacola. That's where we looked at headquarters.
14 And get the make-ready and the backup and everything
15 that has to go with those particular poles which, I
16 think for each one, is going to be something
17 manageable if it's like the proffer.

18 ADMIN. JUDGE SIPPE L: Well let me just
19 stop you there. You, know, you're absolutely --
20 you're going down the right path, in light of what
21 I've told you in terms of what I want to do. The
22 problem is that we have to get this thing on focus,

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1 because the Bureau has to address. Obviously, they
2 want to take a serious look at this, because what I'm
3 talking about is limiting, I'm going to say the size,
4 of certainly putting a governor, if you will, on the
5 amount of evidence that's going to come in, which has
6 a lot of implications, I think all for the good as
7 I'm hearing this today. But what I'm going to ask --
8 I'm going to require you to do is to put it in
9 writing, and come in with a proposal, written
10 proposal, as to what you would agree to for a, in the
11 broad sense, a stipulated record.

12 MR. LANGLEY: Will that include the --
13 what you were discussing earlier about evaluating
14 this limited number of poles? You want us to
15 negotiate some --

16 ADMIN. JUDGE SIPPEL: Right.

17 MR. LANGLEY: Okay.

18 ADMIN. JUDGE SIPPEL: Right. That's
19 exactly right. I say a stipulated record in the
20 sense that here's what you would agree to go hearing
21 on. All right? You pick the number. I don't know.
22 I said 20 out of, you know 10 and 10. If you got a

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1 better way of doing it either lesser or more, that's
2 fine. Whatever you're comfortable with. But, you
3 know -- and how -- you know, and outline exactly what
4 the points are that we covered here this morning.
5 But the bottom line would have to be that both
6 parties would be willing to be bound by an initial
7 decision that was based on that evidence.

8 MR. SEIVER: For purposes of going
9 forward --

10 ADMIN. JUDGE SIPPEL: In other words --
11 yes. You don't say well, I don't like that, because
12 I want to offer more proof or something like that.
13 For purposes of going forward with the case. That's
14 correct.

15 MR. SEIVER: And your honor, and I think
16 we probably could even eliminate the rest of the
17 hearing that we would need to do today, because we
18 were concerned about timing and --

19 ADMIN. JUDGE SIPPEL: Let me get to that.

20

21 MR. SEIVER: Oh, okay.

22 ADMIN. JUDGE SIPPEL: I mean you're

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1 getting ahead of me. If you would be agreeable, both
2 parties would be agreeable to do that. Am I
3 understanding? You're going to go back and talk to
4 your clients, and if I don't hear anything further
5 from you, I'm going to expect that I'm going to get
6 something in, you know, two weeks or something like
7 that?

8 MR. LANGLEY: Yes, your honor.

9 ADMIN. JUDGE SIPPEL: Right?

10 MR. LANGLEY: Absolutely.

11 ADMIN. JUDGE SIPPEL: And then the Bureau
12 would have a chance to comment on this? Is that
13 agreeable?

14 MS. GRIFFIN: That's fine.

15 ADMIN. JUDGE SIPPEL: Thank you, Ms.
16 Griffin. Okay? All right. I'm just going to issue
17 a very general order to that affect, because I'm --
18 I'm going to -- you have more note takers than I
19 have. I think you can piece it together, but I'm not
20 going to try to tell you how to do this, but I'm
21 going to give you just the general authorization to
22 go ahead and submit it to me as a submission seeking

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1 authorization to proceed in that fashion. And the
2 Bureau will then have a chance to comment. Okay.
3 What kind of timeframe do you need to do that?

4 MR. SEIVER: Your honor, one thing that
5 would help is if we get a chance to review the
6 transcript and then discuss -- I know the holiday
7 season's upon us -- and talk to the clients. I would
8 think from my end that I could probably clear up --
9 I'm probably going to need until the end of next
10 week, just because of unavailability.

11 ADMIN. JUDGE SIPPEL: That's fine. No.
12 That's fine. I'm not trying -- the reason I'm saying
13 -- you don't have to get into great detail on this.
14 All you have to do is just outline the procedure
15 with, you know, so that the Bureau can address it.

16 MR. SEIVER: Yes, your honor.

17 ADMIN. JUDGE SIPPEL: The purpose is to
18 simplify the evidentiary part of the hearing, and the
19 parties are satisfied that the ultimate issue can be
20 resolved in the context of an initial decision based
21 on what you're agreeable to put on, with experts. Of
22 course, there would be experts. It's just a question

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1 of the volume of the relevant evidence that would
2 come in.

3 MR. LANGLEY: Would we be pressing it to
4 try to do it by the end of next week?

5 MR. SEIVER: Well, this -- I was going to
6 break it down, your honor, that I think I need to
7 consult with not only my clients, but to make sure my
8 expert witnesses could see that things are going to
9 change. perhaps Mr. Langley's going to do the same
10 thing. I don't think I can finish that discussion
11 until the end of next week. And then I would think
12 if Mr. Langley could finish by the end of next and
13 have a discussion, he and I could then meet and have
14 something to you a week later.

15 MR. LANGLEY: That would be December 9th?

16 MR. SEIVER: That would be the 9th -- a
17 proposal to your honor. I guess we would call it a
18 joint proposal, and if we don't agree on every issue,
19 we could at least break it into --

20 MR. LANGLEY: Sure. Agreed.

21 MR. SEIVER: -- a plan and say this, and
22 Gulf Power says this differently, and that way we

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1 could be looking at something that maybe your honor
2 would want us to come back to say, okay, this is how
3 I like it. I'm not sure we could agree on a schedule
4 after that.

5 ADMIN. JUDGE SIPPEL: I'm not talking
6 about a schedule.

7 MR. SEIVER: Right. But --

8 ADMIN. JUDGE SIPPEL: I'm talking about
9 the -- do you understand what I'm trying to say here?

10 MR. SEIVER: Yes, your honor.

11 ADMIN. JUDGE SIPPEL: I simply want the
12 Bureau to have something tangible to look at, because
13 that have to discuss it amongst themselves and I'm
14 sure with other people in the Bureau and the
15 Commission who are interested in this question before
16 they can come back and say that they're not going to
17 have an objection to it, because it affects the --
18 well, I don't think it does affect substantially the
19 hearing designation order, but it's a different type
20 of hearing than was contemplated by the hearing
21 designation order, I think. So to be sure that we're
22 not off on a, you know, chase here, we want to do it

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1 the right way. For scheduling purposes, however,
2 I've got my own difficulty. And that is I'm going to
3 be out of the country from the 22nd of December until
4 the 4th of January, so to give the Bureau an
5 opportunity to look at this and then come back and
6 have me -- because I wouldn't really have to make
7 that much of a ruling on it. If the Bureau goes
8 along with it, then it's just a question of
9 scheduling dates. That's all it would be. So what
10 do you think? What do you think?

11 MR. SEIVER: Well, that's a very -- that
12 puts us in a little bit of a spot where I think we
13 are going to have to rely on the kindness of each
14 other to come up with a proposal, but if we would
15 file something with the Court, with Ms. Parker, and
16 serve everybody on the 9th so the Bureau would have
17 it, I would presume, giving the need for the Bureau
18 to -- I don't know, would that be something you could
19 do before the end of the year or?

20 ADMIN. JUDGE SIPPEL: Well, maybe they
21 could just -- maybe you could just talk about this.
22 Is that possible to do? Could the is be discussed

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1 amongst yourselves?

2 MS. GRIFFIN: No. I need to see
3 something in writing, your honor. But if the parties
4 were to file something jointly by the 9th, I don't
5 see that there would be any problem having something
6 from us by the 16th if that would be sufficient time
7 for you to consider it before you go out of the
8 country.

9 ADMIN. JUDGE SIPPEL: Yes. That would be
10 -- if I get it on the -- I'm sorry, go ahead.

11 MS. GRIFFIN: I think a week should be
12 sufficient. And I will raise things orally to, you
13 know, apprise people now and then wait for the
14 submission to come in so they at least have
15 themselves attuned to what the issue is going to be.

16 ADMIN. JUDGE SIPPEL: How does that
17 sound?

18 MR. LANGLEY: It sounds good to us.

19 ADMIN. JUDGE SIPPEL: All right. Let's
20 do it on let's say by the 9th. Now if you can get
21 earlier, that's fine. You get it a day early, you do
22 it a day earlier. And I leave the prize as to what

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1 you want to call it. But basically it comes down to
2 a stipulation of the evidence appropriate for initial
3 decision or something along those lines.

4 MR. SEIVER: Scope of hearing. Something
5 like that.

6 ADMIN. JUDGE SIPPEL: Yes. I'm sure
7 you'll come up with it Mr. --

8 ADMIN. JUDGE SIPPEL: I'm not worried
9 about that. And then there will be a comment period
10 that the Bureau can comment on it anytime from the
11 time that they receive it let's say until the 19th?

12 MS. GRIFFIN: The 19th -- the 16th is
13 fine.

14 ADMIN. JUDGE SIPPEL: The 16th. Yes, you
15 don't want to -- We don't want it hanging over the
16 weekend. The 16th and the 9th.

17 MR. SEIVER: Does your honor want us to
18 come back before you depart the country to talk about
19 it?

20 ADMIN. JUDGE SIPPEL: Only if I need it

21 MR. SEIVER: I'm thinking of setting
22 dates. I would presume we're going to suspend all

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1 the other procedural dates while we're looking at
2 this?

3 ADMIN. JUDGE SIPPEL: Well, we haven't
4 gotten to that yet. I haven't gotten to that yet. I
5 don't -- I mean I'm not going to schedule a pre -
6 hearing conference to discuss this if I don't need
7 it. I guess it might make sense to tentatively --
8 well, keep you calendars open for December 20th.

9 MR. SEIVER: For the 20th, your honor?

10 ADMIN. JUDGE SIPPEL: Yes. Is that okay?
11 Can you do that? I thought you all had calendars.

12 MR. SEIVER: I got mine. That's a
13 Tuesday.

14 ADMIN. JUDGE SIPPEL: It's a Tuesday.

15 MR. SEIVER: That's absolutely fine.
16 Okay.

17 ADMIN. JUDGE SIPPEL: All right.

18 MR. SEIVER: If we have any problem with
19 the Tuesday.

20 ADMIN. JUDGE SIPPEL: It might be a
21 simple telephone conference or it might be that we
22 have to come back here, but I'm expecting that if

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1 everybody is agreeable with this procedure, it should
2 be very simple to just, you know, kick the can
3 forward so to speak and change things around so that
4 the schedule will accommodate this.

5 MR. LANGLEY: I'm available on the 20th.

6 ADMIN. JUDGE SIPPEL: Thank you, sir.

7 Thank you. So I got three dates I'm going to write
8 an order about, the 9th, the 16th, and the 20th, all
9 in December. Now in the meantime, what I would
10 contemplate doing and what I am going to do is I am
11 also going to reschedule the rest of the procedural
12 dates in this case to accommodate a hearing starting
13 the 24th of April. And then I will stagger those
14 dates all the way up through December 5th to file the
15 schedule of your expert depositions. Now, what I
16 have here in this new schedule is that you would be
17 deposing experts between December 5 and January 13.
18 And I understand that these new dates that I'm giving
19 you, with the exception of the hearing date, because
20 since we -- if we -- no, I don't want to say it's
21 bifurcating -- if we abbreviate the evidentiary needs
22 of this case, even with the changes, I don't see how

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1 additional time beyond April 24th for a hearing date
2 would be necessary. Whether some of these interim
3 hearing dates might have to be changed is something
4 else again.

5 MR. SEIVER: Your honor, I thought -- I'm
6 sorry.

7 ADMIN. JUDGE SIPPEL: Go ahead.

8 MR. SEIVER: Maybe I'm overly optimistic,
9 but I do think that if we come up with a method, and
10 I think your honor could order us to do it in any
11 event in managing the proceeding, that it may make it
12 better to not do our expert reports, summaries, and
13 testimony until after we've had the exchange and
14 designation of poles so that we know what we're
15 talking about. If your honor wanted the, you know,
16 the experts generally to give their summaries which
17 were, I think, were due tomorrow afternoon, I think
18 that taking the depositions of the experts while
19 we're still waiting for either the specific evidence
20 that would be due on the 9th if those dates stick or
21 on the 10 or 20 poles that we may agree to later may
22 just create some inefficiencies. And I was trying to

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1 save some time on that. And I would not have an
2 objection to sustain any of the procedural dates
3 pending this, since I think that will greatly change
4 both Gulf Power's burdens as well as ours.

5 MR. LANGLEY: Yes. Why don't we just
6 stay the expert report due tomorrow. I think that
7 makes sense.

8 ADMIN. JUDGE SIPPEL: Any objection to
9 that from the Bureau?

10 MR. LIEN: No.

11 ADMIN. JUDGE SIPPEL: All right. We'll
12 do that. We'll do that. And when you submit this
13 pleading on the 9th, or before the 9th -- try and do
14 it the 8th if you can -- state your own suggested
15 procedural hearing dates, not beyond April 24th
16 though.

17 MR. SEIVER: So including when discovery
18 would close and those kinds of things.

19 ADMIN. JUDGE SIPPEL: Right. You might
20 as well, yes, try and set it up, because you'll be
21 thinking this thing through as you're putting this
22 paper together, this document together. You might as

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1 well -- then you can focus on dates much better than
2 I can. But I don't want to drag this case beyond the
3 24th of April. I think that we should be able to --

4 MR. SEIVER: I think, your honor, and
5 again --

6 ADMIN. JUDGE SIPPEL: Maybe earlier.

7 MR. SEIVER: I hate to be overly
8 optimistic, but I don't see any -- if we're going to
9 limit this phase of the hearing to what we've talked
10 about, I think April -- do you disagree just in
11 general terms?

12 MR. LANGLEY: No. I wouldn't --

13 MR. SEIVER: If we come to an agreement?

14 ADMIN. JUDGE SIPPEL: Well, I'll let you
15 know very upfront, though. I cannot do it the week
16 prior to April 24, the April 17th date. I got
17 commitments on that week, so if we're going to do it
18 in April, April 24 would be the earliest that I can
19 do it in April.

20 MR. SEIVER: Would you want to make that
21 the pre-hearing conference as opposed to -- the week
22 of the 17th is out? I thought you had -- didn't you

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1 have us coming in a week before the --

2 SPEAKER: Well, I saw a document
3 admission --

4 MR. SEIVER: -- hearing, your honor?

5 ADMIN. JUDGE SIPPEL: Well, I have all
6 those dates. Yes. Document admissions would be --
7 oh, I'm sorry. April the 19th would be the admission
8 session. What was I talking about? I'll have to
9 pull my other calendar out. The week before April
10 19th --

11 MR. LANGLEY: your honor, I understood
12 you said you were going to enter a new scheduling
13 order that worked backwards from the point forward.

14 MR. PETERSON: After our suggestions and
15 --

16 MR. LANGLEY: Oh. After our suggestions.

17 ADMIN. JUDGE SIPPEL: Yes. April -- I'm
18 sorry. It's the week of April the 10th is the week
19 that I'll be unavailable, and that's why I was
20 setting it on the 24th, because the April 19th is my
21 admission session, reply, trial briefs would be --
22 well, anyway, I've got all these dates. I don't

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1 think there's any point in my reviewing them with you
2 one-by-one, but why don't I put these dates in my
3 order as preliminary dates, and then you can work
4 around them. I mean in any event, you're going to
5 suspended -- the date for the exchange for expert
6 statements is going to be suspended. Okay? And then
7 the new procedures. And then suggested procedural
8 dates. And then set a hearing date for April 24th.
9 Is that what I said? Yes.

10 MR. LANGLEY: Yes, your honor.

11 MR. SEIVER: And so we'll just come up
12 with some proposals that hopefully track the spacing
13 that you had done before.

14 ADMIN. JUDGE SIPPEL: Well, it's more to
15 accommodate you. I mean whatever. You know, you can
16 anticipate the spacing better than I can. So if this
17 is too tight for you in some respect, you know, you
18 can move those dates around, as long as you come up
19 with a trial date, a hearing date that starts on the
20 24th of April.

21 MR. SEIVER: I guess the only other thing
22 that might be, if we get the comments back from the

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1 Bureau, we don't know if the Bureau would want to
2 testify or have a witness or the right of cross
3 examination.

4 ADMIN. JUDGE SIPPEL : Mr. Seiver, we
5 don't have to cross that bridge until the Bureau --

6 MR. SEIVER: Right. Yes, your honor.

7 ADMIN. JUDGE SIPPEL: -- files something
8 in response to what you're proposal is.

9 MR. SEIVER: I'm sorry. I'm jumping
10 ahead --

11 ADMIN. JUDGE SIPPEL: Yes. Don't worry
12 about it. I mean you might have to worry about it
13 later, but don't worry about it today. They're going
14 to have to look at it very carefully. They're going
15 to talk amongst themselves as to what we're talking
16 about here. And I'm just trying to give you -- I'm
17 trying to give you a date certain as to when you're
18 going to have to be prepared and I'm going to give
19 you dates that I would anticipate you would be doing
20 procedural things. And as I say, I'm open to new
21 dates on that, as long as it's within the timeframe
22 of now and the 24th of April. Okay? Anything else?

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1 Anything further? Now, I'm expecting that you're
2 going to cooperate in all these other respects, too,
3 that we talked about this morning at length. You
4 know, the stipulation for example. There's no reason
5 why stipulations can't go forward during this interim
6 period of time. You know, what you're holding off
7 from is exchanging statements and the furtherance of
8 well, you know, I don't have to repeat that, all
9 these make -ready work orders, etcetera, etcetera,
10 etcetera, that we talked about.

11 MR. COOK: Your honor, one point of
12 clarification? The December 9th dates that you
13 previously imposed on Gulf Power will stay?

14 ADMIN. JUDGE SIPPEL: Yes. Yes. Yes.

15 MR. SEIVER: We're agreeable to that.

16 MR. COOK: Okay.

17 ADMIN. JUDGE SIPPEL: Yes. Those are all
18 underway. They're all committed to that.

19 MR. SEIVER: And we can negotiate Osmose
20 and the other things that we thought we wanted to see
21 if there's some aspect?

22 ADMIN. JUDGE SIPPEL: Please, negotiate

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1 as much as you want. I'm very anxious for that.

2 MR. LANGLEY: Let's negotiate on a rate.

3 MR. SEIVER: I'm happy to do that. May
4 we keep the conference after the close of the hearing
5 so we could at least make some progress?

6 ADMIN. JUDGE SIPPEL: Certainly. Oh,
7 yes. It's yours for the day if you want it. We're
8 making progress here, and I don't want to get in the
9 way of it. Okay?

10 MR. SEIVER: Very well, your honor.

11 ADMIN. JUDGE SIPPEL: We'll in recess
12 then until further call, and I'll wait to receive
13 your proceedings and move accordingly. Thank you.
14 We're off the record.

15 (Whereupon, the conference in the above -
16 entitled matter was concluded at 11:42 a.m.)

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Name of Hearing

EB DOCKET NO. 04-381

Docket No. (if applicable)

445 12th STREET, S.W., WASHINGTON, D.C.

Place of Hearing

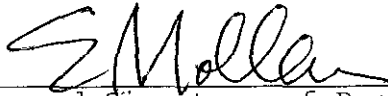
NOVEMBER 21, 2005

Date of Hearing

We, the undersigned, do hereby certify that the foregoing pages, numbers 219 through 341, inclusive, are the true, accurate and complete transcript prepared from the reporting by Eric Mollen (Reporter's Name) in attendance at the above identified hearing, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription statement of Work and have verified the accuracy of the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the hearings and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the hearing or conference.

November 28, 2005

Eric Mollen



Date

Legible Name and Signature of Reporter

Name of Company: Neal Gross Co.

November 28, 2005

Lucy Gudz



Date

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